

IMPACT FEE ADMINISTRATOR REPORT & RECOMMENDATION

IMPACT FEE APPEAL - IFA-0090001:

APPELLANT: Katie Halperin
9025 Turnberry Circle
Lincoln, Nebraska 68526

PROPERTY: 1525 S 19 Street - IF080601
1537 S 19 Street - IF080600

REQUEST: The appellant is appealing from the Water System, Water Distribution, and Wastewater Impact Fees Determinations dated July 10, 2008. The appellant argues that the replacement of two-1" water meters with two-1 1/2" water meters, at the project location, does not create an additional demand on the water system, water distribution supply, or wastewater system.

RECOMMENDATION:	Denial
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REASONS:

This appeal does not meet any of the stipulations required for reduction in an Impact Fees. According to Lincoln Municipal Code § 27.82.110 of the Impact Fee Ordinance, the City Council shall not waive fees unless there is a finding that the fee was incorrectly calculated or that there are unusual circumstances which demonstrate that appeal of the fee for the development would be unfair or unjust. Those findings do not exist in this matter.

The appeal does not meet any of the stipulations required for reduction according to 27.82.050 Imposition of Impact Fees ((d) Calculating Fees through an Independent Fee Calculation Study) as the appellant did not request that the Impact Fee Administrator determine the amount of required Impact Fees for the proposed development by reference to a qualified professional independent fee calculation study provided at the appellant's cost.

Impact Fee applications (IF080600, IF080601, IF080602, and IF080603) were not paid under protest by appellant; and per the Lincoln Municipal Code § 27.82.110 (i) Appeals must be filed with the City Clerk within ten days after the determination for which the appeal is being filed. Appellant's "Notice of Appeal" was filed 176 days after the date of determination.

The Impact Fees were correctly calculated based upon the Impact Fee Schedule. The Impact Fees are based on the net increase in the fee for the new use as compared to the previous use, and the exclusion areas of the Downtown/Antelope Valley area apply to Arterial Street and Parks and Trails Impact Fees only.

FACTS:

1. The appeal does not meet any of the stipulations according to 27.82.050 Imposition of Impact Fees (d) Calculating Fees through an Independent Fee Calculation Study. If such person (appellant) elects not to have the Impact Fee determined according to the Impact Fee schedules, such person (appellant) may request that the Impact Fee Administrator determine the amount of a required Impact Fee for the proposed development by reference to an independent fee calculation study prepared at such person's (appellant's) cost by a qualified professional in the preparation of such analysis. The letter from Mr. J. Matt Carlson, Sawhorse, does not provide a professional analysis to support Appellant's request for reduction. (Attachment B)
2. The Water and Wastewater Impact Fees are based on meter capacity and not on water use or on population of the development. The wells, treatment facilities, pumping and storage facilities, and water distribution mains are all sized to meet the maximum day or maximum hour demands of all customers. The larger the meter, the larger the potential demand.¹
3. The Notice of Appeal narrative states that "According to our plumbing contractors, a 1" supply could have been sufficient, but a 1.5" supply is appropriate for this and similar projects". (Attachment A) Additionally, the letter from Saw Horse states "In order to increase the overall system capacity, we ultimately designed for (2) 1 1/2" taps on the main and metering systems that would then reduce to 1" feeds for each of the units." (Attachment B) Thus, the appellant chose to increase the system capacity for this development.
4. The Notice of Appeal references the Arterial Street Impact Fees. The Arterial Street Impact Fees are included in this appeal. Credit was provided for the prior use. The net difference due for Arterial Street Impact Fees was -0-. (Attachment C)
5. Appellant incorrectly states the Notice of Appeal is to be filed 10 days after payment of the Impact Fee. The Lincoln Municipal Code § 27.82.11 (i) states the appeals must be filed with the City Clerk within ten days after the determination for which the appeal is being filed. The Impact Fee Applications (IF080600, IF080601, IF080602, and IF080603) were not paid under protest by appellant. Conversations did take place with appellants representative, Mr. Badami, regarding reductions, independent study options, and appeal time lines prior to determinations. The Impact Fee Applications were filed June 13, 2008 at Building and Safety and paid October 14, 2008. The Impact Fee Determination's were made on July 10, 2008. The Appellant filed the Notice of Appeal 176 days after the determination, on January 2, 2009.
6. The Water/Wastewater Utilities Impact Fees were correctly calculated based upon the Water/Wastewater Impact Fee Schedule. Lincoln Municipal Code § 27.82.050(4) provides that if a person is applying for a permit to allow a change of meter size the Impact Fee shall be based on the net increase in the fee for the new meter size as compared to the previous use. Public Works and Utilities Business Office records indicate the previous water meters at 1531 S 19th Street was a 1" water meter; and 1541 S 19th Street was a 1" water meter. Appellant is replacing the two 1" water meters with two 1 1/2" water meters. Calculating the Water/Wastewater Impact Fee pursuant to Lincoln Municipal Code § 27.82.050 (4): the prior 1"water meter

Water/Wastewater Utility Impact Fee is a credit of \$3140 per each meter. (Water System Fee is \$1,296; Water Distribution Fee is \$805; and the Wastewater Fee is \$1,039). The new 1 ½" water meter Water/Wastewater Utility Impact Fee is a charge of \$6,281 (Water System Fee is \$2,592; Water Distribution Fee is \$1,610; and the Wastewater Fee is \$2,079). Therefore, calculating the Water/Wastewater Impact Fee pursuant to Lincoln Municipal Code § 27.82.050 (4) the Water/Wastewater Utility Impact Fee 1 ½ " meter is a fee of \$6,281 - the 1" meter is a fee of \$3,140 = a net amount due of \$3,141 per each meter; or \$6,282 total Water/Wastewater Utility Impact Fee.

¹Duncan and Associates, "Lincoln Impact Fee Study", October 2002

FILED
IMPACT FEE CLERK'S OFFICE
NOTICE OF APPEAL
 2009 JAN 2 AM 11 26

This appeal must be filed with the City Clerk within 10 days after the date of the determination for which the appeal is being filed. Although the fees may be reduced via this appeal process, the fees may NOT be waived using the appeal process. A City Council determination shall be final.

Appeal of Impact Fee Determination for Property Located at:

1537 S. 19th
 1525 S. 19th
 1533 S. 19th
 1529 S. 19th

Date: Jan 1, 2009

Building Permit Application No. B0801544, B0801545

At the next regular City Council meeting following the filing of the appeal the Council will schedule a time and place for hearing the appeal. The City Clerk shall mail notice of the hearing to the party at the address given below.

The following party alleges a grievance related to Impact Fees:

Name: Katie Halperin
 Company (if Applicable): Washington Square, LLC
 Address: 9025 Turnberry Cir
 City, State, Zip: Lincoln, NE 68526
 Phone: 402-486-4774
 Email Address: KPH@NebHomeSales.com

Written Explanation of why the party feels a Determination was in Error: Attach written explanation of why the appellant feels that a determination was in error.

See Attached

Final Determination by Council on _____ Day of _____, 20____.
 Resolution No. _____

**Impact Fee
Notice of Appeal
Washington Square Redevelopment Project**

This is a request to have the impact fees paid for the Washington Square Redevelopment project be waived and refunded accordingly. This appeal is being brought forward late in the process due to conflicting communication that came from a variety of staff from the City of Lincoln. Staff names are excluded from the following chronology as this request is not an indictment of any specific staff members.

The rationale for appeal is:

At the time I submitted for plan reviews, I contacted City staff expressing my desire to appeal the impact fees. I was told that there was "nothing to appeal until the fees were paid". The day I paid for the building permit and the impact fees (10-14-08), I once again contacted City staff. Staff told me the first step would be to contact Asst. City Attorney, Rick Peo for a determination if there was an exemption, under LMC 27.82.060. City staff contacted Mr. Peo and asked the question. Weeks later, Mr. Peo advised me, in writing, that no exemption existed for this project. I once again asked City staff how to appeal the impact fees. At that time I was told by City staff that I had missed the deadline. The deadline was 10 days after I filed and paid for plan reviews.

At this point, I made an appointment to speak to Mr. Peo. We met on December 19, 2008. I asked Mr. Peo the correct procedure to file an appeal. He said I needed to submit an "Impact Fee Notice of Appeal" which, due to the timeliness of my appeal, may be rejected. I explained to him that City staff had no idea on the correct appeal procedure and told him the above events. Mr. Peo smiled and said "he wasn't surprised staff didn't know what to do. We don't get many appeals".

The rationale for an exemption for Washington Square is:

This project was reengineered to minimize the impact City infrastructure. The project general contractor can provide exacting details of the changes in plans that were made. The changes, which increased costs to me as the developer, result in a project that significantly reduce the impact on the City and neighborhood. This is represented by an estimate of \$40,000 impact fees for this project as a greenfield development versus the current \$6,000 impact fee as paid.

Other Lincoln redevelopment areas are exempt from impact fees including Antelope Valley and Downtown.

According to the 2002 Impact Fee Report, impact fees were intended to assess part of the cost for new infrastructure to new development that is necessitating the infrastructure cost.

- ➡ Pg. 1: The report "...estimates the net cost to accommodate new development..."
- ➡ Pg. 23: "The cost of the capacity to serve an additional SFE (single family equivalent) customer is dependent on the average demand for water."



Washington Square is redeveloping land to a lesser density than its prior use. It is not adding more customers to the system. The apartment buildings that were torn down had 18 units. I estimate that an average of 4 people lived in each unit for a total of 72 residents. Washington Square has 16 units and I estimate an average occupancy of 3 people or 48 residents. That is a reduction of 24 residents impacting the water/sewer/streets. Washington Square is being built to current code and standards with low-flow water fixtures reducing the burden on the City systems even though the number of explicit bathrooms has increased.

The use of 1.5" main lines and water meters instead of 1" previously existing meters has been questioned.. The supply has been selected to assure appropriate water pressure throughout the development. The length of the buildings require the larger supply to assure that the far ends of the development have adequate water pressure. According to our plumbing contractors, a 1" supply could have been sufficient, but a 1.5" supply is appropriate for this and similar projects..

This project is reducing the impact on City streets. The previous apartment buildings had 19 off street parking spaces for 72 residents. Washington Square will have 32 parking spaces for 48 estimated residents. There are 2 parking spaces per unit.

In closing, please recognize that this project reduces impact on city infrastructure and accordingly should not be subject to impact fees. The delay in the submission of this appeal was due to conflicting and incorrect information provided by members of City staff. As a first of kind development, this confusion is understandable yet we should not be punished for pushing forward a project that will serve the City and its citizens. It is vital that developers are given sufficient support to encourage redevelopment and assure success within the City core.

Thank you for your consideration of this appeal and your continued support of our project.



October 31, 2008

Katie Halperin
Washington Square, LLC
PO Box 6165
Lincoln, NE 68506-0165

Katie,

In sizing the utilities, specifically the domestic water services, for the Washington Square Project, we considered several options.

A single 2½" tap would have been sufficient to meet the usage and pressure requirements for the project. However, since the city water department doesn't use 2½" taps, we would have had to increase the size to a 3" tap. By doing so, the impact fees associated with the project nearly tripled.

As a result, we explored the use of the existing 1" taps -- one for each of the two properties that make up the project. By splitting the metering configuration for the project into two groups of seven units, we were able to meet the usage requirements of the project in terms of the number of gallons. However, ultimately we were concerned that the overall length of the lines and the need to deliver water to the third floor of each unit would result in insufficient water pressure for the units at the end of the trunk line. In order to increase the overall system capability, we ultimately designed for (2) 1½" taps on the main and metering systems that would then reduce to 1" feeds for each of the units.

I hope this helps to clarify the process.

Sincerely,

J. Matt Carlson
President

ATTACHMENT C

PRIOR USE:				NEW USE						
		Per unit	Credit	IF APPLICATION NUMBER	NO UNITS	FEE PER UNIT	ART. STR FEE	APPLIED CREDIT	DIFFERENCE DUE	
ARTERIAL STREETS:				ARTERIAL STREETS:						
DEMO	12 PLEX	\$1,501	\$18,012	IF080600	1537 SOUTH 19	7 MULTI	\$1,501	\$10,507	(\$10,507)	\$0.00
DEMO	6 PLEX	\$1,501	\$9,006	IF080601	1525 SOUTH 19	7 MULTI	\$1,501	\$10,507	(\$10,507)	\$0.00
				IF080602	1529 SOUTH 19	1 SFD	\$2,466	\$2,466	(\$2,466)	\$0.00
				IF080603	1533 SOUTH 19	1SFD	\$2,466	\$2,466	(\$2,466)	\$0.00
TOTAL ARTERIAL STREET IMPACT FEE CREDIT							\$25,946	(\$27,018)		\$0.00
WATER AND WASTEWATER				WATER AND WASTEWATER						
					WATER METER SIZE	FEE PER WATER METER	WATER/ WASTEWATER CREDIT	NET DIFFERENC E DUE	NET PAID OCTOBER 2008	
ABANDONED	1531 S 19 1" METER	\$3,140	(\$3,140)	IF080600	1537 SOUTH 19	1 1/2	\$6,281	(\$3,140)	\$3,141	\$3,141
ABANDONED	1541 S 19 1" METER	\$3,140	(\$3,140)	IF080601	1525 SOUTH 19	1 1/2	\$6,281	(\$3,140)	\$3,141	\$3,141
				IF080602	1529 SOUTH 19					
				IF080603	1533 SOUTH 19					
TOTAL WATER/WASTEWATER IMPACT FEE CREDIT							\$12,562	(\$6,280)	\$6,282	